

Order 2003-5-8
Served: May 9, 2003



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 6th day of May, 2003

Essential Air Service at

CAPE YAKATAGA, ALASKA
ICY BAY, ALASKA

under 49 U.S.C. 41731 *et seq.*

Docket OST-1996-2009

ORDER GRANTING PETITION
AND AFFIRMING PREVIOUS ACTION

Summary

By this order, we are granting the Petition for Reconsideration filed by Jim Air, Inc., and are affirming our decision in Order 2002-12-26 selecting Cordova Air Service, Inc., to provide essential air service at Cape Yakataga and Icy Bay, Alaska, for a two-year term.¹

Background

By Order 2002-12-26 issued December 31, 2002, the Department selected Cordova Air Service to provide essential air service at Cape Yakataga and Icy Bay for a two-year period. Subsidy was set at an annual rate of \$40,619 for service consisting of three round trips each week during peak season, and two each week during the off-peak season, between the communities and Cordova, with 4-seat Cessna 206 aircraft.

The Department made its selection based on traditional, long-standing carrier selection criteria set forth in 49 U.S.C. Section 41733. These criteria include the demonstrated reliability of the applicant in providing scheduled service, the preferences of the actual and potential users of the service, giving substantial weight to the views of the elected officials and, for places in Alaska, the experience of the applicants in providing, scheduled air service. In this case, the most salient decisional factor was the difference in

¹ See Appendix A for a map.

requested subsidy of the two applicant carriers -- Cordova Air Service and Silverado Air Taxi -- that fully prosecuted their applications.

In October 2002, the Department sent a letter to the Alaska DOT summarizing the proposals of the then three applicant carriers -- Cordova Air Service, Silverado Air Taxi and Jim Air. All three carriers were proposing almost identical service at the communities utilizing Cessna 206 aircraft with either four or five available passenger seats. The major difference among the three carriers was the amount of subsidy they were requesting for the service. Cordova Air Service was requesting \$40,619 per year; Silverado Air Taxi was requesting \$61,025 per year; and Jim Air was requesting \$51,616. Subsequently, in a telephone conversation with Department staff, Jim Air withdrew its proposal, leaving only two applicants. This information was then conveyed to the Alaska DOT, which had not yet submitted its comments on the carrier selection decision. The Alaska DOT, however, later advised the Department that it would not take a position on the selection of either of the two remaining carriers.

Jim Air Petition

On January 14, 2003, Jim Air filed a Petition for Reconsideration asking the Department to reconsider its decision in Order 2002-12-26, and to select Jim Air to provide essential air service to Cape Yakataga and Icy Bay in accordance with its proposal as originally submitted. Jim Air adamantly denied that it ever withdrew its proposal and objected to the fact that Cordova Air Service was permitted to lower its proposed subsidy amount to \$40,619 after the original bids had been submitted. Jim Air stated that it should be awarded the subsidy contract because it submitted the lowest original subsidy bid, and it was significantly lower (\$3,300 lower) than that of Cordova Air Service.

Decision

After careful review of this matter, and all relevant information, we have decided to affirm our findings in Order 2002-12-26.

Jim Air's petition centers on two basic arguments. First, the carrier argues that the other applicants were allowed to alter their subsidy requests after the proposals had been submitted to the Department and, second, that the carrier did not withdraw its proposal as the Department's staff had indicated.

Regarding the first point, it is important to note that the nature of the essential air service program is different from most government procurement. Typically, the government issues requests for proposals for products or services that it needs, such as computer systems, consulting work, etc.² In the case of the essential air service program, however, we are procuring a commodity, namely air service, for a third party, *i.e.*, various communities across the country.

² When Congress reauthorized the essential air service program in 1987, several bills were introduced that would have subjected the program to federal procurement law; none were adopted. See Order 94-11-20 at p 7 and footnote 14.

We allow, and indeed encourage, amendments to carriers' proposals, and conduct subsidy rate negotiations with the carriers. Since Congress specifically did not establish the essential air service program as a low-bid system, it is incumbent upon us to ensure that the taxpayers' dollars are used as efficiently as possible. Thus, since the inception of the program in 1978, the government has required applicants to document the cost and revenue assumptions that make up their bids. During the process of these negotiations, it is not uncommon for the subsidy rate to change, or for additional, more cost-effective options, to emerge. In addition, we want proposals to be responsive to the communities' needs. When we request proposals for essential air service, we allow for the communities to submit comments once the proposals are received. During the rate negotiations, whether in response to communities' comments or not, a carrier might realize that it can provide a different service pattern that is supported by the community for less subsidy. For example, a carrier may be able to provide three one-stop round trips a day for less subsidy than two nonstop round trips a day, and the community may favor that option. This well-established and enunciated practice allows us to balance the communities' air service needs with our fiduciary responsibilities.

Thus, from the reading of Order 2002-4-13, in which we formally solicited service proposals for Cape Yakataga and Icy Bay, and the references therein, Jim Air knew, or should have known, that the process of conducting subsidy rate negotiations has been our standard operating practice for more than 20 years. Jim Air had the same opportunity as any other applicant to reduce its bid. That the other carriers took that opportunity to amend their subsidy rates during negotiations, one of which won the contract, was not unfair to any applicant.

While Jim Air did not submit, in writing, a withdrawal of its proposal to provide essential air service, the staff relied on such withdrawal conveyed orally by telephone (which is typical in cases in Alaska, because of the long distances involved). Nevertheless, even if Jim Air's proposal had been considered along with those of both Cordova Air Service and Silverado Air Taxi, it still would not have been selected to provide the service. As the Department stated in the Order, because the Alaska DOT had decided not to state a preference for a carrier, and because all of the proposals were virtually identical except for subsidy, the final selection decision was based almost entirely on each applicant's final requested subsidy amounts. In that regard, Jim Air's proposal would have required 25 percent more subsidy than Cordova Air Service's, \$51,616 compared to \$40,619.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. We grant the Petition for Reconsideration of Order 2002-12-26 filed by Jim Air, Inc. and, upon reconsideration, we affirm our decision in Order 2002-12-26 selecting Cordova Air Service, Inc., to provide Cape Yakataga and Icy Bay, Alaska, with service to Cordova for a two-year period;
2. Docket OST 96-2009 shall remain open until further order of the Department; and

3. We will serve a copy of this order on the civic officials of Cape Yakataga and Icy Bay, the Alaska Department of Transportation and Public Facilities, Jim Air, Cordova Air Service, Silverado Air Taxi and Gulf Air Taxi.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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ALASKA